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THE DISTRICT COURTS, INDIGENT DEFENSE, AND PROSECUTORIAL SERVICES IN MONTANA

**A REPORT TO THE
FORTY-EIGHTH LEGISLATURE**

**Joint Subcommittee
On Judiciary**

December 1982

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JOINT SUBCOMMITTEE ON JUDICIARY

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Summary of Recommendations

The Joint Subcommittee on Judiciary recommends that the 1983 Montana Legislature consider enacting:

1. A bill altering certain judicial district boundaries and changing the number of judges in certain districts.
2. A bill disapproving that part of the supreme court rule on disqualification of judges that allows each adverse party in a civil case two substitutions of a judge and recommending that the court amend its rule to allow one substitution per party.
3. A bill requiring the clerk of district court in certain multi-judge counties to provide for the random assignment of judges in civil and criminal cases.
4. A bill revising the provisions for state grants to counties for district court assistance.
5. A bill creating the position of public defense coordinator and providing for the coordinator's appointment, qualifications, removal, salary, staff, and duties.
6. A bill requiring the state to contribute annually from the state general fund to each county employing one or more deputy county attorneys an amount equal to \$1 for each county resident to assist in the payment of salaries for deputy county attorneys.
7. A bill providing longevity pay for county attorneys and their deputies.
8. A bill providing for nonpartisan elections of county attorneys and sheriffs.
9. A bill providing that the training coordinator for county attorneys may act as special counsel to a county.
10. A bill permitting a defendant sentenced to death to be confined at the state prison at state expense pending execution.

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE MONTANA CRIMINAL JUSTICE SYSTEM, INCLUDING ALTERNATIVE WAYS AND EFFECTS OF REDISTRICTING MONTANA'S DISTRICT COURT SYSTEM, ESTABLISHING A STATEWIDE DISTRICT ATTORNEY SYSTEM FOR CRIMINAL PROSECUTIONS, AND PROVIDING FOR A STATEWIDE SYSTEM OF REPRESENTATION FOR INDIGENTS ACCUSED OF CRIMES; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, it is apparent that the equitable administration of criminal justice throughout the State of Montana is at times thwarted because of the tremendous caseload of certain District Courts; and

WHEREAS, the civil caseload of certain District Courts is so large that unreasonable delays in the resolution of conflicts often occur; and

WHEREAS, the current County Attorney system for criminal prosecutions results in inconsistencies in the administration of criminal justice in the State of Montana; and

WHEREAS, the increasing sophistication of criminal activity in the State of Montana can only be counteracted by highly trained, professional prosecutors; and

WHEREAS, the constitutional requirement of the effective assistance of counsel for persons accused of crimes has not been achieved consistently on a statewide basis; and

WHEREAS, the cost of defense in a major felony prosecution can create a tremendous burden on an individual county.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in accordance with section 5-5-217, MCA, the Legislative Council is requested to assign a joint subcommittee to study:

(1) the need for restructuring Montana's judicial districts taking into account civil and criminal caseload as well as geographical considerations;

(2) alternative plans for redistricting the present judicial district;

(3) the effects of redistricting judicial districts on the administration of justice and the costs and benefits;

(4) the need for establishing a District Attorney system for criminal prosecutions;

(5) alternative plans for establishing District Attorney districts and their relationship to Montana's judicial districts;

(6) the effects of establishing a District Attorney system on the administration of criminal justice and the costs involved;

(7) the need for a statewide system of publicly funded defense services for indigents accused of crimes;

(8) the alternative plans for the public defender system; and

(9) the effects of providing defense services under a statewide system and the cost ramifications of the system.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 16, 1981.

INTRODUCTION

During the 1981 legislative session, Senate Joint Resolution 2 (SJR 2) was introduced requesting a study of three interrelated issues: restructuring the district courts, providing for a statewide system of representation for indigents accused of crimes, and establishing a statewide district attorney system for criminal prosecutions. Resolution supporters argued that the current ill-proportioned districts cause delay in the administration of justice at the trial court level. Rather than address the problem piecemeal by adding a judge or two each legislative session, they called for a more comprehensive approach involving realignment of district boundaries coupled with judgeship creation. In conjunction with judicial redistricting, the sponsor of the resolution urged that the delivery of indigent defense and prosecutorial services also be examined to determine if the current methods of providing these services should be replaced with statewide systems. Advocates of a public defender and a district attorney system claimed that these statewide systems could eliminate inconsistencies in the defense of indigents and in the prosecution of crime while reducing the financial burden on counties to provide these services.

The Forty-Seventh Legislature, persuaded by the arguments for the need to study these issues, adopted the resolution. In a poll of the legislators after the session, SJR 2 was ranked second on the priority list of issues to be studied during the 1981 - 1982 interim. The Subcommittee on Judiciary, consisting of members from the House and Senate judiciary and local government standing committees, was appointed in May 1982 to fulfill the mandates of the resolution.

The Subcommittee on Judiciary began its work in July 1981. The group decided first to focus its attention on the district courts and judicial redistricting and later study the delivery of indigent defense and prosecutorial services in the state. Members delayed studying these topics because they believed that any plans for a statewide public defender or district attorney system would likely reflect changes made in the structure of judicial districts.

After adoption of a study plan, several meetings were devoted to fact-gathering and analysis. Members became familiar with the topics under study through staff reports, questionnaires, and expert testimony from judges, clerks of district courts, staff attorneys from

the Department of Justice, public defenders, county attorneys, and other interested groups and individuals. These practitioners in the judicial system alerted the subcommittee to problem areas and concerns.

Throughout this information-gathering phase, the subcommittee directed staff to draft legislation to address a number of these concerns. The members discussed these bills, offered amendments, heard public testimony, and took action on the legislation. On several occasions the subcommittee reconsidered its original action when presented with more information on the impact of the legislation.

The subcommittee concluded its studies in November 1982. During its seventeen-month study, members met eight times and recommended ten bills for consideration by the Forty-Eighth Montana Legislature. The following report presents a synopsis of subcommittee deliberations on this legislation and a summary of each bill. Additional information on subcommittee legislation and related topics, including staff reports, questionnaire results, and statistical data, is available through the Legislative Council, Research Division.

Numerous agencies, groups, and individuals provided information and resources for this study. In particular, the subcommittee thanks the following individuals for their assistance:

Hon. Gordon Bennett, District Court Judge,
First Judicial District

Hon. Alfred Coate, District Court Judge,
Sixteenth Judicial District

John Maynard, Assistant Attorney General,
Department of Justice

Mike Abley, Supreme Court Administrator,
Montana Supreme Court

Marc Racicot, Training Coordinator for County
Attorneys, Department of Justice

I. THE DISTRICT COURTS

In Montana, the district courts are the trial courts of general jurisdiction. The state is divided into four single-county and fifteen multi-county districts for a total of nineteen. Eleven of the judicial districts are served by one judge each; five districts have two judges each; one district has three judges; and two districts have four judges each for a total of thirty-two district court judges. The size, population, and density varies greatly among districts. For instance, the largest district in the state is 23,212 square miles (District 16) while the smallest district is 715 square miles (District 2). The population of the districts ranges from 133,809 in District 13 to 9,967 in District 14. District 2 is the most densely populated with 53.27 people per square mile; District 14 has the lowest density with 1.49 people per square mile. (See Appendix A for map and description of current districts.)

Article VII, Section 6 of the Montana Constitution authorizes the legislature to divide the state into judicial districts and to provide for the number of judges in each district. After reviewing statistical data on district populations, case filings, and judges' travel or "windshield" time,¹ and hearing testimony from judges about inequities in workloads, the subcommittee recognized the need for restructuring the districts to create a more equitable distribution of judicial business throughout the state. Members believed that a comprehensive remapping of the districts and the addition of new judgeships would contribute to the effective administration of the courts.

The subcommittee spent a good portion of its time devising and revising a judicial redistricting plan for presentation to the 1983 Legislature. While working on the plan, members addressed other related topics including disqualification of judges through peremptory challenges, random assignment of judges to cases, and the district court grant program.

Judicial Redistricting

At the subcommittee's request, the Montana Judges Association appointed a committee to assist the legislators in developing a judicial redistricting plan. In February 1982, the judges' committee submitted two redistricting proposals for the

subcommittee's consideration: Plan 3, developed by Judge Gordon Bennett from District 1, and Plan C, developed by Judge Alfred Coate from District 16. The two plans differed substantially. Plan 3 divided the state into ten regional multi-county districts and created two new judgeships. Under this plan population centers were surrounded by rural areas, creating a mixture of urban and rural interests within most districts. In contrast, Plan C constructed twenty-one smaller districts, including six single-county districts, and added six new judges. Boundary lines were drawn to separate urban counties from the surrounding rural ones.

Initially, the committee endorsed Plan 3. Members felt that the legislature would be more receptive to funding two new judges rather than six. In addition, Plan 3 provided a more balanced workload among judges. It also created multi-judge districts, providing more flexibility in substituting judges in cases of disqualification, vacation, attendance at judicial workshops, etc. The subcommittee further modified Plan 3 by dividing each district (except District 1) into subdistricts composed of one or more counties. After election a judge would be required to live within a particular subdistrict. His office would also be located within the same district. These subdistricts were created to provide better access to the courts for residents in rural counties and to avoid the need for urban counties to expand their courthouses to accommodate additional judges. (See Appendix B for copy of Revised Plan 3.)

The subcommittee's endorsement of Plan 3 met with opposition. A major criticism of the proposed redistricting plan was that the creation of subdistricts increased travel time; the requirement to live and maintain offices in subdistricts would force judges residing in rural counties to travel frequently to the urban counties where most of the workload exists. Moreover, if urban counties continue to be litigation centers, then the need for building additional courthouses or offices in these counties cannot be avoided because judges must hear the cases where they are filed. Opponents of the plan also noted that the creation of multi-judge districts could cause friction and disputes among the judges that would impede the administration of justice. Others claimed that if judges were elected district-wide, as proposed under Plan 3, urban voters would dominate the selection process and rural interests would suffer.

The subcommittee took the criticisms of the plan under advisement. Conceding that the plan had some serious flaws, the legislators decided not to pursue the plan any further. Instead they agreed to take a second look at the Coate plan. Members felt that the creation of smaller districts under Plan C might reduce travel time. Furthermore, smaller districts that segregate urban counties from surrounding rural areas would preserve rural interests and representation in the courts.

But the subcommittee realized that any plan recommending the creation of six new judgeships was bound to fail because of funding problems. Therefore, the subcommittee adopted a revision of Plan C, requiring the addition of four rather than six judges. Several boundary changes were also made to the plan to accommodate the reduction in new judges.

In making adjustments to Plan C, subcommittee members considered a number of factors including casefilings, travel time, geographical barriers, road systems, and regional interests. The subcommittee attempted to equalize judges' caseloads while recognizing travel time. Under the revised plan, judges in rural districts covering large geographical areas generally have lighter casefilings than their counterparts in the more compact urban districts to compensate for the travel time needed to service these vast areas. In addition to casefilings and travel, the subcommittee took into consideration geographical barriers that could impede the delivery of judicial services. Members also examined the availability of roads and highways to facilitate travel within the realigned districts. Moreover, the legislators recognized the importance of preserving regional interests and community identification patterns when drawing boundary lines.

Specific features of the subcommittee's redistricting plan include the following:

1. The plan makes incremental boundary changes while maintaining the current number of districts (19).
2. Boundaries in nine districts (Districts 1, 2, 3, 5, 9, 11, 15, 18, and 19) remain unchanged.
3. The boundary lines in District 10 are expanded to encompass District 14. The judge in District 14 is retained, adding another judge to District 10 for a total of 2 judges. The district number "14"

is reassigned to the newly-created district composed of Ravalli County.

4. Four new judgeships are created in Districts 1, 6, 7, and the newly created District 14 (Ravalli County) but one judgeship is eliminated in District 2 for a total of 35 judges, a net increase of 3 judges.
 - a. The additional judge in District 1 is justified by the complexity of government litigation.
 - b. With the addition of two counties (Stillwater and Carbon) to District 6, another judge is needed to handle the increased workload.
 - c. With the increase of cases filed in Richland County resulting from energy development and the addition of two counties (Garfield and Prairie) to District 7, another judge is needed.
 - d. A new district composed of Ravalli County is created along with a new judgeship. The district number "14" is reassigned to this newly created district.
 - e. Because of declining population and casefilings in recent years, one judge is eliminated in District 2. The current caseload (1,200) handled by one judge is consistent with the cases-per-judge ratio found in other urban districts including Districts 4, 8, and 13. Since District 2 is a single county district, little travel is required within the district to detract from time spent on the bench. However, the elimination of a judge in District 2 must be delayed until completion of the term of office in January 1989, because Article VII, Section 6 of the Montana Constitution provides that "no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed."
5. Without the creation of new judgeships requiring additional courtroom space, caseloads and windshield time in three urban districts

(Districts 4, 8, and 13) are reduced by severing counties from each district.

- a. In District 4, Ravalli County is dropped and becomes a new district.
- b. In District 8, Chouteau County is dropped.
- c. In District 13, Treasure, Stillwater, and Carbon Counties are removed.

A map and description of the plan follow, along with a before and after redistricting comparison of casefilings and population per judge.

(1981 casefilings are contained within each county)

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Description of Plan

<u>District</u>	<u>Counties</u>	<u>No of Judges</u>
1	Lewis and Clark Broadwater	3
2	Silver Bow	1
3	Powell Granite Deer Lodge	1
4	Sanders Lake Mineral Missoula	4
5	Jefferson Madison Beaverhead	1
6	Park Sweetgrass Stillwater Carbon	2
7	Garfield Prairie Richland Dawson Wibaux McCone	2
8	Cascade	3
9	Glacier Toole Pondera Teton	1
10	Judith Basin Fergus Petroleum Meagher Wheatland Golden Valley Musselshell	2
11	Flathead	2

12	Liberty Hill Chouteau	1
13	Yellowstone Big Horn	4
14	Ravalli	1
15	Daniels Sheridan Roosevelt	1
16	Rosebud Custer Powder River Carter Treasure Fallon	2
17	Phillips Valley Blaine	1
18	Gallatin	2
19	Lincoln	<u>1</u>
		35

Comparison Before and After Redistricting

District	Before			After		
	Counties	No. of Judges	Cases per Judge	Counties	No. of Judges	Cases per Judge
1	Lewis and Clark Broadwater	2	1,160	Lewis and Clark Broadwater	3	774
2	Silver Bow	2	600	Same	1	1,200
3	Powell Granite Deer Lodge	1	898	-----District Unchanged-----		
4	Missoula Mineral Lake Sanders Ravalli	4	1,472	Missoula Mineral Lake Sanders	Same	1,262
5	Jefferson Beaverhead Madison	1	835	-----District Unchanged-----		
6	Park Sweet Grass	1	728	Park Sweet Grass Stillwater Carbon	2	607
7	Dawson McCone Richland Wibaux	1	1,463	Dawson McCone Richland Wibaux Garfield Prairie	2	781
8	Cascade Chouteau	3	1,123	Cascade	Same	1,057
9	Teton Pondera Toole Glacier	1	970	-----District Unchanged-----		
						26,899

<u>District</u>	<u>Before</u>			<u>After</u>		
	<u>Counties</u>	<u>No. of Judges</u>	<u>Cases per Judge</u>	<u>Pop. per Judge</u>	<u>Counties</u>	<u>No. of Judges</u> <u>Cases per Judge</u> <u>Pop. per Judge</u>
10	Judith Basin Fergus Petroleum	1	625	16,377	Judith Basin Fergus Petroleum Meagher Wheatland Golden Valley Musselshell	2 520 13,172
11	Flathead	2	938	25,983	-----District Unchanged-----	
12	Liberty Hill Blaine	1	1,071	27,313	Liberty Hill Chouteau	Same 1,051 26,406
13	Yellowstone Big Horn Carbon Stillwater Treasure	4	1,485	33,452	Yellowstone Big Horn	Same 1,357 29,783
14	Meagher Wheatland Golden Valley Musselshell	1	415	9,967	Ravalli	1 838 22,493
15	Daniels Sheridan Roosevelt	1	657	18,716	-----District Unchanged-----	
16	Rosebud Custer Fallon Powder River Carter Prairie Garfield	2	705	17,291	Rosebud Custer Fallon Powder River Carter Treasure	Same 669 16,035
17	Phillips Valley	1	557	15,617	Phillips Valley Blaine	Same 774 22,616
18	Gallatin	2	745	21,432	-----District Unchanged-----	
19	Lincoln	1	680	17,752	-----District Unchanged-----	

At the final subcommittee meeting in November 1982, members adopted LC 135, a bill implementing the judicial redistricting plan. The subcommittee agreed that the new judgeships should be filled by election rather than appointment. Some members feared that appointment would give the appointees an unfair advantage over challengers if they chose to run for election after completing their initial term of office.

The legislators also agreed that the elections be held November 1984, the first general election for judicial offices following passage of the act, with the winners taking office January 1985; however, if the county commissioners within a district perceived the need for the judge to take office before this date, the counties could hold an election in November 1983, to fill the new position. The winner would then take office January 1984.

Furthermore, the legislators felt that it was necessary to synchronize the terms of all district court judges to avoid difficulties in implementing future redistricting plans. The terms of 28 of the 32 judges now serving expire January 1, 1989. Of the remaining four judges, two terms expire January 7, 1985, and the other two expire January 5, 1987.² To put these four judges plus the four new judges created by the redistricting plan on the same election schedule as the majority, the subcommittee provided that the term of office for these eight judges will expire January 2, 1989.

If all the new judges are elected in November 1984 and assume office in January 1985, the fiscal impact of this bill on the state general fund will be approximately \$110,500 for fiscal year 1985. County expenditures will reach about \$101,600.

A copy of the bill and its fiscal note is contained in Appendix C-1.

Disqualification of Judges

During discussions on judicial redistricting, judges told the subcommittee that the operations of the district courts could be improved by eliminating the use of peremptory challenges to disqualify judges. This procedure results in the automatic removal of a district court judge upon filing a written motion for substitution by a party to a civil or criminal case. No reasons, facts, or proof need accompany the motion.

The authority to disqualify judges through peremptory challenges is contained in a supreme court rule adopted in 1981 and codified as §3-1-801, MCA. According to Article VII, Section 2(3) of the Montana Constitution, the rule is subject to disapproval by the legislature in either of the two sessions following promulgation. Under the disqualification rule, each adverse party is entitled to two substitutions of a judge in civil cases and one substitution in criminal cases. A party may seek the removal of a judge by filing a written motion for substitution with the district court clerk within ten consecutive days after the judge is assigned to the case; if no motion is filed within this time, the right to move for substitution is waived. Upon receipt of the motion, the clerk notifies all parties and the judge who has been challenged. The judge named in the motion has no further power to act in the case other than to call in another judge and to set the calendar. The first disqualified judge is responsible for calling in all subsequent district judges.

The current rule also permits two additional methods for disqualifying judges. First, any justice, judge, or justice of the peace may disqualify himself. The rule prohibits a judge from acting in any proceeding if he is a party to or has an interest in the case, if he is related to either party by blood or marriage, or if he has been counsel in the proceeding for any party, or has rendered the judgment, order, or decision being appealed. Second, all district court judges, justices of the peace, and municipal court judges may be disqualified for cause. To disqualify a judge for cause, a party to a case must file within twenty days before the original trial date a "timely and sufficient" affidavit that the judge has a personal bias or prejudice either against him or in favor of any adverse party. The affidavit must state the facts and reasons for the belief that bias or prejudice exists and be certified by counsel that the challenge is made in good faith. After the affidavit is filed, the judge can act no further in the case until a hearing is held on the merits of the disqualification request. There is no limit to the number of judges that a party may disqualify for cause.

Opponents to disqualification of judges by peremptory challenge argue that such provisions hinder and delay the administration of justice. Attorneys have been accused of abusing the peremptory challenge to delay trials, to buy time, to "judge shop" for someone who may be more sympathetic to their clients, and to retaliate against a judge for a prior ruling. Travel

costs are also incurred when a judge from another district must substitute for a disqualified colleague.

At its meeting in November 1981, the subcommittee, on a split vote, adopted a bill disapproving that part of the supreme court rule on disqualification of judges that permits the removal of a district court by peremptory challenge; the other provisions of the rule permitting a judge to disqualify himself, and allowing a party to remove a judge for cause, were left intact. A majority of the members believed that the elimination of peremptory challenges would improve judicial administration. They also felt that the problem of a judge being prejudiced against a cause, client, or attorney could be adequately addressed through challenges for cause.

After hearing testimony from the Montana Bar Association opposing the elimination of peremptory challenges, the subcommittee voted at its meeting in April 1982, to reconsider its action on the bill. During debate on the bill, two members argued that peremptory challenges serve a valuable purpose: they permit the removal of a judge from a case when conflicts exist between the judge and litigants without publicizing information that could harm reputations or damage future relationships between the bench and the bar. Moreover, these legislators were not convinced that the current rule is being abused or causing unnecessary delay in the courts. As a compromise to total elimination of peremptory challenges, the legislators recommended that the number of challenges in criminal cases remain at one per party, but that the number of challenges in civil cases be reduced from two to one. The subcommittee voted four to three (one member absent) to accept this recommendation and directed staff to draft legislation reducing the number of peremptory challenges in civil cases.

At the July 1982 meeting, staff advised the subcommittee that reducing the number of peremptory challenges in civil cases by striking the word "two" and inserting "one" in the supreme court rule on the disqualification of judges may go beyond the legislature's constitutional authority to disapprove a rule. Recognizing that the legislature's power is limited to disapproval, rather than amendment the subcommittee, on a split vote (five to three), adopted LC 36. This bill disapproves that portion of the rule allowing two peremptory challenges per party in civil cases but

recommends in the preamble that the supreme court amend its rule to provide one challenge in civil cases.

A copy of LC 36 is contained in Appendix C-2.

Random Assignment of Judges

During discussions on the disqualification of judges, Judge James Wheelis, District 4, recommended that if peremptory challenges to judges are eliminated, judge assignments in multi-judge districts should be made random. Randomization would prevent attorneys from using the rotational assignment method to choose judges to hear their cases. In districts where the assignment of judges is done on a rotational basis, an attorney, by examining the register of action in the clerk of court's office can easily determine who will be assigned to his case before he actually files the papers. If he does not want a particular judge assigned to his case, the attorney can delay filing until a more desirable judge is available for assignment. Thus, the rotational method for assigning judges may be used to "disqualify" a judge before a case is assigned. This manipulation of the assignment process may give the state in criminal cases or the plaintiff in civil cases an unfair advantage over the defendant. Without peremptory challenges, the defendant's only recourse for removing a judge is to file an affidavit demonstrating cause.

The subcommittee, sympathetic to Judge Wheelis' suggestion, directed staff to draft legislation requiring the random assignment of judges as companion legislation to the bill abolishing peremptory challenges. After members voted to reduce rather than abolish peremptory challenges, the need for the bill was not as critical because a litigant still had one chance to remove a judge without demonstrating cause. Nevertheless, members felt that the bill requiring random assignment had merit unto itself and recommended by unanimous vote that it be introduced as a committee bill in the 1983 session.

This bill, LC 6, requires the district court clerk, in a county with a population of 37,000 or more, located in a multi-judge district, to institute the following procedure for the random assignment of judges in criminal cases and civil cases excluding adoptions, youth court actions, and commitment proceedings: the clerk must provide capsules representing each judge within the district. An equal number of capsules for

each judge is placed in a selection box. When an attorney files a case the clerk blindly draws a capsule from the box to assign a judge. The judge assignment is then recorded in the register of actions and the capsule is discarded into a second box. This procedure is repeated for each case that is filed until all capsules have been selected. Then the discarded capsules are returned to the selection box.

A copy of LC 6 is contained in Appendix C-3.

District Court Grant Program

While reviewing funding provisions for the district courts, the subcommittee examined the district court mill levy and grant program. A county may levy an annual tax on property within its boundaries to finance district court operations. This tax may not exceed six mills in first and second class counties, five mills in third and fourth class counties, and four mills in fifth, sixth, and seventh class counties. If the court costs exceed the sum derived from the mill levy, a county may apply to the Montana Department of Administration for a state grant to meet its district court obligations. The 1981 Legislature appropriated \$375,000 in grant money for fiscal year 1982, and the same amount for fiscal year 1982. In August, 1981, thirteen counties received district court grants ranging in amounts from \$86,675 to \$360. The grant money for fiscal year 1984⁵ is scheduled to be distributed in December, 1983.

In April 1982, the subcommittee adopted LC 14 removing the sunset provision on the grant program and mill levy. The bill also contained amendments suggested by the Department of Administration and the Montana Association of Counties to clarify and streamline the administration of the grant program.

In September 1982, the Department of Administration again appeared before the subcommittee requesting members to reconsider their action on LC 14 to allow further amendments to the bill. The department explained that several issues concerning eligibility for and audit of grant moneys had developed that could be resolved through the provisions of LC 14. The subcommittee agreed to reconsider its action on the bill. At the final meeting in November 1982, the subcommittee voted unanimously to adopt LC 14 as revised by the department.

This bill, endorsed by the Montana Association of Counties and the Urban Coalition, requires a county to apply to the department for a district court grant by July 20 for the previous fiscal year unless the department grants a time extension. Under the provisions of the bill the department must award a grant if the county's district court expenditures exceed the sum of 1) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed,⁶ multiplied by the previous year's taxable valuation of the county; and 2) all revenues except district court grants required by law to be deposited in the district court fund for the previous fiscal year. Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court except costs for building and capital items and ⁷library maintenance, replacement, and acquisition.⁷ LC 14 further provides that the department must audit each approved grant request. After all grants are awarded, each county will then be charged a fee based upon the costs incurred in conducting the audit. If a county receives a grant exceeding the amount for which it was eligible, the recipient must repay the excess to the department. This excess will then be redistributed to the other counties receiving grants. The bill also grants rulemaking authority to the department to administer the program. Because of this grant of authority, a statement of intent must accompany the bill. The department submitted a statement to the subcommittee at its final meeting, and the legislators adopted it.

A copy of LC 14, along with a statement of intent, is contained in Appendix C-4.

II. INDIGENT DEFENSE

After the study on the structure and operations of the district courts was well underway, the subcommittee focused on the delivery of indigent services in Montana. The indigent defense survey conducted by the subcommittee revealed little conformity among the counties in methods used to provide legal services to the poor. Survey results also showed that the costs of providing these services vary greatly across the state.⁸ The subcommittee, recognizing the need to assist counties in meeting defense costs and to provide adequate representation for indigents, debated two bills concerning indigent defense: 1) an act creating a statewide public defender system; and 2) an act creating a public defense coordinator.

The first bill was a more ambitious and comprehensive approach to indigent defense. It created a state public defender system supervised by a nine-member commission and operated by a state public defender. The bill required the state defender to divide the state into public defender districts and to establish district offices staffed by deputy defenders. These defenders would provide representation to indigent persons at state expense. Because the bill did not specifically define the number of districts, offices, or defenders involved in a statewide system, staff developed for the committee's consideration a proposed plan according to the provisions of the bill. The estimated cost of operating a statewide plan was about \$4.4 million for fiscal years 1984 and 1985.⁹ The subcommittee tabled the bill because of the cost to the state associated with establishing and operating a statewide system.

As an alternative to creating a public defender system, members unanimously adopted LC 35, an act creating the office of public defense coordinator. The subcommittee felt that creation of this office would be a less drastic and less costly method of providing assistance to the counties for indigent defense services.

Public Defense Coordinator

The position of public defense coordinator created in LC 35 is patterned after the Office of Training Coordinator for County Attorneys (Title 44, Ch. 4, part 1, MCA.) Under the provisions of the bill the office of the coordinator is allocated to the Department of Administration for administrative purposes only.¹⁰ The Governor must appoint the coordinator from a list of

three candidates¹¹ submitted by the Chief Justice of the Supreme Court. The duties of the coordinator include: providing training for public defenders and court-appointed counsel; planning for the future provision of defense services in the state; providing criminal law information including official opinions and legal briefs; collecting data on indigent defense costs and caseloads; and applying for and disbursing any federal funds available for defense services.

Most importantly, LC 35 permits the coordinator to act as trial counsel or counsel in appellate and postconviction proceedings when the county determines that providing defense services by the usual means will place an unreasonable burden on county funds and resources. In major criminal cases, this option may prove less costly than employing a defense attorney under an assigned counsel system. Moreover, the coordinator's services can be enlisted in those instances where the local bar lacks the desire or expertise to provide defense services. However, the bill does require the county to pay the coordinator an hourly fee for these services. This money is deposited into an earmarked revenue fund for use by the coordinator's office. The cost of operating the office of public defense coordinator for fiscal years 1984 and 1985 is estimated to be \$123,070 and \$125,837, respectively.

A copy of LC 35 and its fiscal note can be found in Appendix C-5.

III. PROSECUTORIAL SERVICES

Shortly after examining the delivery of indigent defense services in the state, the subcommittee began its study of prosecutorial services. Members discovered through a survey of county attorney offices that vast disparities exist among the counties in the areas of salaries, staff size, criminal and civil caseloads, and budgets.¹² Some county attorneys argued that these disparities have led to inconsistencies in criminal prosecution throughout the state and recommended that a statewide district attorney system be created to replace the current county attorney system for prosecution of criminal matters.

At the July 1982 subcommittee meeting, a staff member of the Attorney General's office presented a district attorney proposal for the subcommittee's consideration. Basically, the plan divided the state into ten districts corresponding to the subcommittee's original redistricting plan (Plan C Revised). Ten district attorneys and sixty-eight assistant district attorneys would be employed to staff the district offices. These attorneys would assume all state criminal cases (felony and misdemeanor) plus state civil work. The estimated cost for the system would be about \$45,000 per attorney.

The subcommittee, unconvinced that a district attorney system was warranted, rejected the proposal and sought less drastic steps toward improving the delivery of prosecutorial services in the state. The subcommittee drafted and approved a series of six bills concerning county attorneys.

Funding for Deputy County Attorneys

Currently, the state's contribution towards financing the county attorney offices amounts to one-half the salary of each county attorney. The subcommittee, anxious for the state to assume more of the costs for prosecutorial services, adopted a bill (LC 67) requiring the state to assist counties in the payment of salaries for deputy county attorneys. Under the provisions of LC 67, the state auditor on July 1 of each fiscal year must issue from the state general fund and deliver to the treasurer of each county employing one or more deputy county attorneys an amount equal to \$1 for each county resident. The treasurer must deposit this amount into the county general fund to assist in payment of each deputy's salary. According to the subcommittee's county attorney questionnaire

conducted in May 1982, thirty-two counties employ deputy county attorneys. The estimated cost of this bill in general fund moneys is about \$1,453,388.

A copy of LC 67 and its fiscal note are contained in Appendix C-6.

Longevity Pay

Repeatedly, the subcommittee heard about the high turnover rate among county attorneys and their deputies. Oftentimes, young attorneys serve in office to gain experience and exposure before entering more lucrative private practices. Taxpayers' money used to train these individuals is lost when they leave office after a term or two. Moreover, the high turnover rate means that criminal prosecutions are being handled by attorneys without much experience. To address this problem the subcommittee agreed to introduce legislation to provide longevity pay for county attorneys and their deputies as an incentive to remaining in office.

This bill, LC 68, entitles a county attorney or deputy with three years or more of service, to an increase in salary of \$1,000 on the anniversary date of his employment. After completing five years of service he will receive an additional increase in salary of \$1,500. After six years of service and for each year thereafter up to the eleventh year of service a county attorney or deputy is entitled to an additional annual increase in salary of \$500. The total amount of the longevity payment that a county attorney or his deputy could receive is \$5,000. The fiscal impact of this bill on the state general fund is \$84,185 for fiscal year 1984 and \$98,028 for fiscal year 1985, for a biennium total of \$182,213.

A copy of LC 68 and its fiscal note is contained in Appendix C-7.

Nonpartisan Elections

The subcommittee felt that the prosecution of crime should be a nonpartisan activity. To avoid the appearance that a county attorney is motivated by partisan politics, the subcommittee recommended nonpartisan elections of county attorneys. They extended this recommendation to include sheriffs, who are also participants in law enforcement at the county level.

LC 77, approved by the subcommittee, requires county attorneys and sheriffs to be nominated and elected on a nonpartisan basis as are judges.

A copy of LC 77 is contained in Appendix C-8.

Special Counsel Services

Under the Attorney General's supervision within the Department of Justice is the Office of Training Coordinator for County Attorneys. The training coordinator is an attorney appointed by the Attorney General from a list of three names proposed by the Montana County Attorneys Association. According to §44-4-103, MCA, his duties include: providing local training in current aspects of criminal law for county attorneys and other law enforcement personnel; assisting in developing and disseminating standards, procedures, and policies to ensure the consistent and uniform application of criminal laws throughout the state; consolidating present and past information on criminal law; providing a pool of official opinions, legal briefs, and other relevant criminal law information; providing assistance with research, briefs, or other technical services requested by a county attorney or other law enforcement official; and applying for and disbursing federal funds available to aid the prosecutorial function. Although not enumerated in statute, the training coordinator also serves upon request of the county as special counsel in criminal cases at a rate of \$35 an hour. County payments for special counsel services are deposited in the state general fund.

At the subcommittee's meeting in July 1982, county attorneys told the legislators that it was often impossible to receive approval from the county commissioners to employ the training coordinator as special counsel in cases involving the prosecution of a commissioner or his relative. To alleviate this difficulty the subcommittee drafted and approved LC 83.

This bill provides statutorily for a function that the training coordinator is currently performing: Acting as special counsel upon request of the county attorney with the approval of the governing body of the county. However, LC 83 also provides that if a case involves the prosecution of a county commissioner or a close relative of the commissioner, the coordinator may, with the consent of the Attorney General, act as special counsel upon request of the county attorney without approval of the county commission. This deviates from

the current practice of providing services only with the county's consent. Furthermore, whenever the coordinator serves as special counsel, with or without the county's permission, the county must pay the bill for these services.

A copy of LC 83 is contained in Appendix C-9.

Housing Death Row Inmates

During discussions on the proposed district attorney system, a staff member of the Attorney General's office told the subcommittee that a defendant sentenced to death cannot be housed at the state prison at state expense pending execution unless, in addition to the death penalty, he was sentenced to a term of years for a lesser crime committed during commission of the capital offense. If a county chooses to house a death row inmate at the state prison, the county must pay the state a fee for incarcerating him. Currently, Duncan MacKenzie is the only Montana inmate who did not receive a term sentence in addition to the death penalty. To date, Pondera County has spent over \$23,000 to house him at the state prison.

The subcommittee, seeking to relieve counties of this financial burden, adopted LC 70. This bill amends the death penalty statutes to specifically provide that the sheriff may deliver a defendant to the state prison for confinement pending execution of a sentence of death. Furthermore, the state must bear the cost of imprisoning the defendant from the date of delivery.

A copy of LC 70 is contained in Appendix C-10.

Notes

¹An analysis of district court statistics is contained in the following unpublished staff report on file at the Legislative Council, Research Division: The District Courts in Montana: A Report to the Subcommittee on Judiciary (September 1981).

²The terms that expire in 1985 are in Districts 13 and 18; the terms that expire in 1987 are in Districts 4 and 19.

³Counties falling under the provisions of the bill include Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone. The bill excludes less populated counties within multi-judge districts from the randomization requirement because of their small number of casefilings. The standard procedure in smaller counties is to assign a single judge to hear all cases within that county for a given period of time. To require all judges within the district to travel on a random basis to the smaller counties to hear cases would prove inefficient and a waste of judicial resources.

⁴Random assignment does not apply to adoptions and youth court actions because typically these cases are assigned to the same judge who has expertise in these areas. Commitment proceedings are excluded because they must be heard without delay by whichever judge is available.

⁵The distribution of grant money for fiscal year 1983 was delayed because of a controversy over the eligibility of Missoula and Roosevelt Counties for grant assistance. Because neither county had levied the maximum district court mill levy authorized by law for the district courts, the department declared them ineligible for grant money. The counties challenged the department on this finding of ineligibility. The department then requested an Attorney General's opinion. In September 1982, the Attorney General ruled that the department may not require a county to impose the maximum mill levy for district court expenses before it may be considered eligible for a state grant to district courts. In light of this ruling the department has revised its grant application forms and has asked the counties to resubmit their requests.

⁶Section 1(3)(a) of LC 14 reflects the Attorney General's ruling that a county need not impose the

maximum mill levy for district court expenses before being eligible for grant money.

⁷The Urban Coalition testified at the November 1982 meeting that it opposed the exclusion of costs for building and capital items and library maintenance, replacement, and acquisition as eligible costs for grant purposes. The coalition believes that these are legitimate expenses associated with court operations and therefore they should not be arbitrarily excluded.

⁸An analysis of indigent defense services is contained in the following unpublished staff report on file at the Legislative Council, Research Division: Indigent Defense in Montana: A Report to the Subcommittee on Judiciary (April 1982).

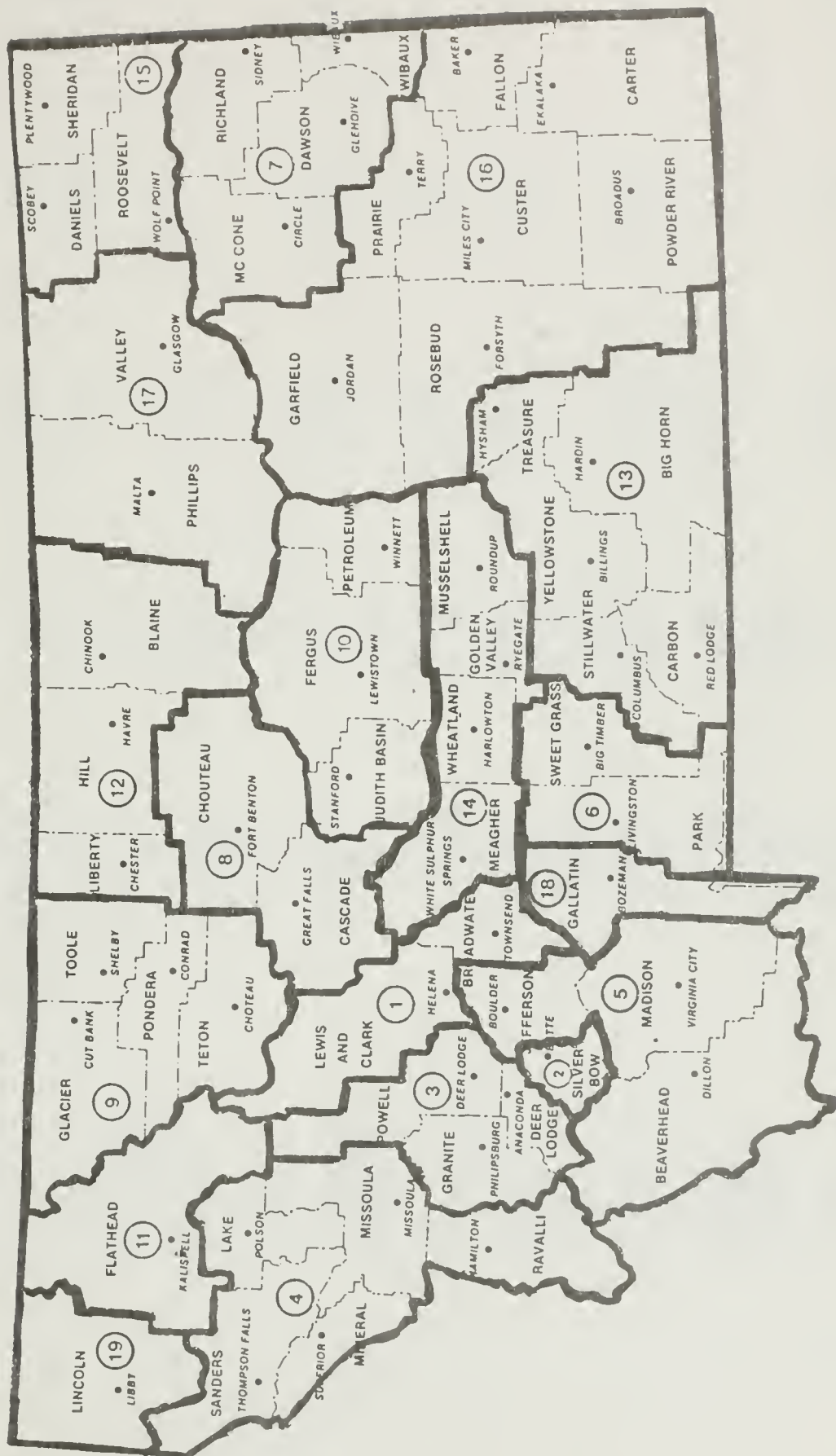
⁹Under the provisions of the bill the statewide system would not be operative until January 1985.

¹⁰In the bill as originally drafted the office was allocated to the Department of Justice. The subcommittee made the switch to the Department of Administration to avoid any claims of conflict of interest.

¹¹One legislator questioned the constitutionality of limiting the Governor's power of appointment to a list of three candidates. The subcommittee's staff researched the question and found no constitutional problem with the provision requiring the Governor to choose from a list provided by the chief justice. This legal memorandum dated August 9, 1982 is on file at the Legislative Counsel, Research Division.

¹²An analysis of prosecutorial services is contained in the following unpublished staff report on file at the Legislative Council, Research Division: Prosecution Services in Montana: A Report to the Subcommittee on Judiciary (July, 1982).

APPENDIX A: CURRENT JUDICIAL DISTRICTS



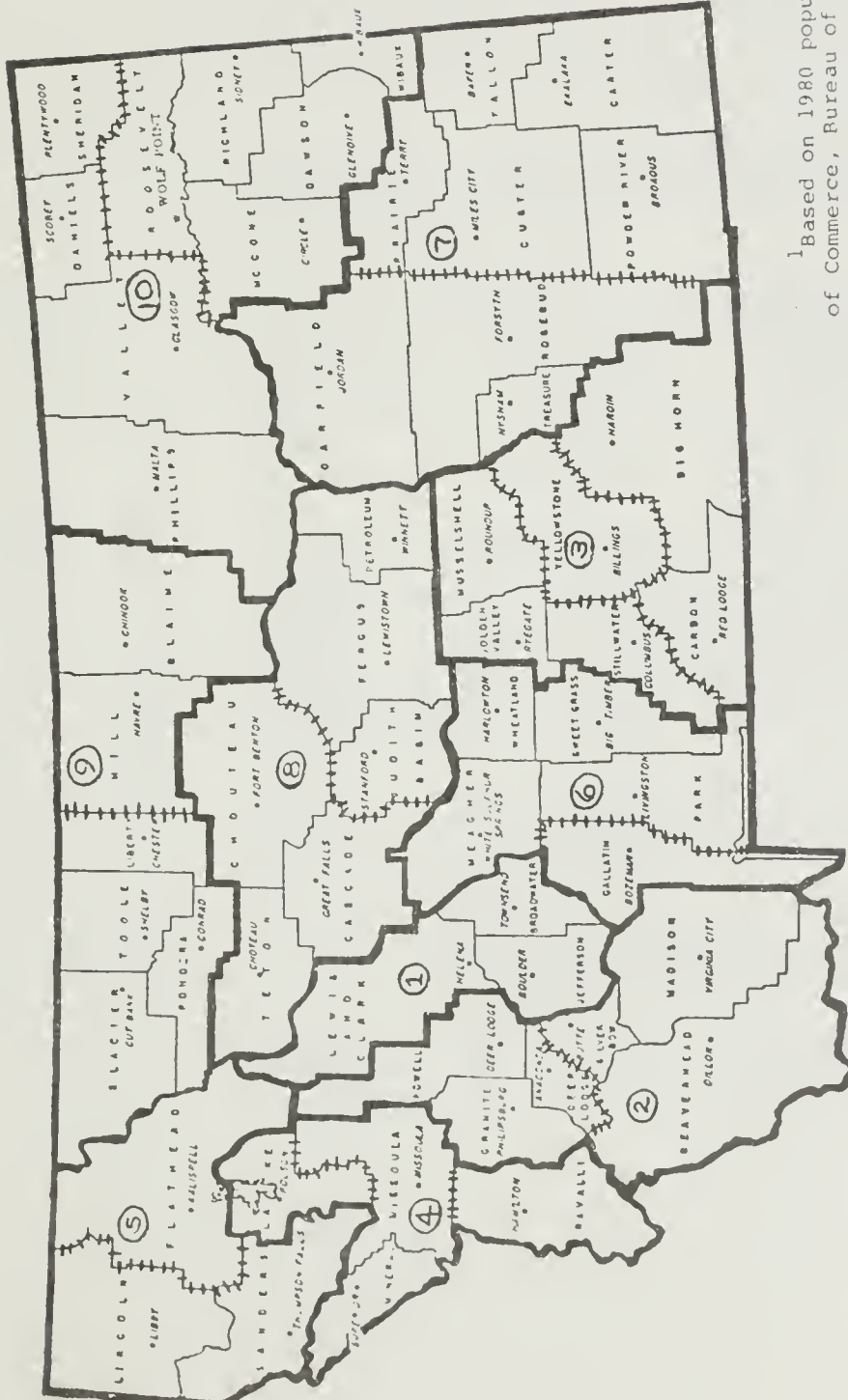
CURRENT JUDICIAL DISTRICTS

Dist.	No. Judges	Counties	Population*	County Area Sq. Miles	District Population	District Area Sq. Miles	Population Per Judge
1	2	Lewis and Clark Broadwater	43,039 3,267	3,476 1,193	46,306	4,669	23,153
2	2	Silver Bow	38,092	715	38,092	715	19,046
3	1	Powell Granite Deer Lodge	6,958 2,700 12,518	2,336 1,733 740	22,176	4,809	22,176
4	4	Missoula Mineral Lake Ravalli Sanders	76,016 3,675 19,056 22,493 8,675	2,612 1,222 1,494 2,382 2,798	129,915	10,509	32,478.7
5	1	Beaverhead Jefferson Madison	8,186 7,029 5,448	5,551 1,652 3,528	20,663	10,731	20,663
6	1	Park Sweet Grass	12,660 3,216	2,626 1,840	15,876	4,466	15,876
7	1	Dawson McCone Richland Wibaux	11,805 2,702 12,243 1,476	2,370 2,607 2,079 890	28,226	7,946	28,226
8	3	Cascade Chouteau	80,696 6,092	2,661 3,927	86,788	6,588	28,929.3
9	1	Teton Pondera Toole Glacier	6,491 6,731 5,559 10,628	2,294 1,645 1,950 2,964	29,409	8,851	29,409
10	1	Fergus Judith Basin Petroleum	13,076 2,646 655	4,242 1,880 1,655	16,377	7,777	16,377

Dist.	No. Judges	Counties	Population*	County Area Sq. Miles	District Population	District Area Sq. Miles	Population Per Judge
11	2	Flathead	51,966	5,137	51,966	5,137	25,983
12	1	Liberty Hill Blaine	2,329 17,985 6,999	1,439 2,927 4,265	27,313	8,631	27,313
13	4	Yellowstone Big Horn Carbon Stillwater Treasure	108,035 11,096 8,099 5,598 981	2,642 5,023 2,066 1,794 985	133,809	12,510	33,452.2
14	1	Meagher Wheatland Golden Valley Musselshell	2,154 2,359 1,026 4,428	2,354 1,420 1,176 1,887	9,967	6,837	9,967
15	1	Roosevelt Daniels Sheridan	10,467 2,835 5,414	2,385 1,443 1,694	18,716	5,522	18,716
16	2	Custer Carter Fallon Prairie Powder River Garfield Rosebud	13,109 1,799 3,763 1,836 2,520 1,656 9,899	3,756 3,313 1,633 1,730 3,288 4,455 5,037	34,582	23,212	17,291
17	1	Phillips Valley	5,367 10,250	5,213 4,974	15,617	10,187	15,617
18	2	Gallatin	42,865	2,517	42,865	2,517	21,432.5
19	1	Lincoln	17,752	3,714	17,752	3,714	17,752

*County population and area figures from U.S. Department of Commerce, Bureau of the Census, Census of Population and Housing, 1980. (P.L. 94-171. Population Counts, Montana).

APPENDIX C: REDISTRICTING PLAN C REVISED



District	No. of Judges	Pop. per Judge	Cases per Judge ²
1	3	17,775	871
2	3	24,634	860
3	6	23,047	1,029
4	5	24,248	1,116
5	3	26,131	954
6	3	21,065	790
7	2	17,781	719
8	4	27,414	1,049
9	2	25,115	919
10	3	20,853	892

¹Based on 1980 population figures from U.S. Department of Commerce, Bureau of the Census.

²Based on 1981 casefiling statistics from Judicial Management Information System, Office of Supreme Court Administrator.

APPENDIX C: PROPOSED LEGISLATION

1. LC 135: An act to alter certain judicial district boundaries and to change the number of judges in certain judicial districts; providing for the election of new judges.
2. LC 36: An act to disapprove that part of the supreme court rule on disqualification and substitution of judges that allows each adverse party in a civil case two substitutions of a judge.
3. LC 6: An act to require the clerk of district court in certain counties to provide for the random assignment of judges in civil and criminal cases.
4. LC 14: An act revising the provisions for state grants to counties for district court assistance; providing a formula for computing the grants, requiring the Department of Administration to audit grant recipients; granting the department rulemaking authority.
5. LC 35: An act to create the position of public defense coordinator; to provide for the coordinator's appointment, qualifications, removal, salary, staff, and duties; and to provide for a county contribution to the costs of the coordinator's request.
6. LC 67: An act requiring the state to assist counties in the payment of salaries for deputy county attorneys; and providing an effective date.
7. LC 68: An act providing longevity pay for county attorneys and their deputies.
8. LC 77: An act to provide for the nonpartisan election of county attorneys and sheriffs.

9. LC 83: An act providing that the training coordinator for county attorneys may act as special counsel to a county; requiring the county to pay for these special counsel services.
10. LC 70: An act permitting a defendant sentenced to death to be confined at the state prison at state expense pending execution.

1
2 INTRODUCED BY _____ BILL NO. _____
3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALTER CERTAIN
6 JUDICIAL DISTRICT BOUNDARIES AND TO CHANGE THE NUMBER OF
7 JUDGES IN CERTAIN JUDICIAL DISTRICTS; PROVIDING FOR THE
8 ELECTION OF NEW JUDGES; PROVIDING ABBREVIATED TERMS OF
9 OFFICE FOR CERTAIN JUDGES; AMENDING SECTIONS 3-5-101,
10 3-5-102, AND 3-5-203, MCA; AND PROVIDING A TERMINATION DATE
11 AND EFFECTIVE DATES."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 Section 1. Section 3-5-101, MCA, is amended to read:
15 "3-5-101. Judicial districts defined. In this state
16 there are 19 judicial districts, distributed as follows:
17 (1) 1st district: Lewis and Clark and Broadwater
18 Counties;
19 (2) 2nd district: Silver Bow County;
20 (3) 3rd district: Deer Lodge, Granite, and Powell
21 Counties;
22 (4) 4th district: Missoula, Mineral, Lake, Ravalli
23 and Sanders Counties;
24 (5) 5th district: Beaverhead, Jefferson, and Madison
25 Counties;

1 (6) 6th district: Park, Stillwater, Carbon, and Sweet
2 Grass Counties;
3 (7) 7th district: Dawson, McCone, Richland, Prairie
4 Garfield, and Wibaux Counties;
5 (8) 8th district: Cascade and ~~Chouteau~~ Counties
6 County;
7 (9) 9th district: Teton, Pondera, Toole, and Glacier
8 Counties;
9 (10) 10th district: Fergus, Judith Basin, ~~Headwaters~~
10 ~~Wheatland~~, ~~Golden Valley~~, ~~Musselshell~~, and Petroleum
11 Counties;
12 (11) 11th district: Flathead County;
13 (12) 12th district: Liberty, Hill, and Blaine ~~Chouteau~~
14 Counties;
15 (13) 13th district: Yellowstone and Big Horn ~~Garbon~~
16 ~~Stillwater~~ and ~~Treasure~~ Counties;
17 (14) 14th district: ~~Meagher~~ ~~Wheatland~~ ~~Golden~~ ~~Valley~~
18 ~~and Musselshell~~ ~~Counties~~ ~~Ravalli~~ County;
19 (15) 15th district: Roosevelt, Daniels, and Sheridan
20 Counties;
21 (16) 16th district: Custer, Carter, Fallon, Prairie
22 Powder River, Garfield ~~Treasure~~, and Rosebud Counties;
23 (17) 17th district: ~~Phillips~~ ~~Blaine~~ and Valley
24 Counties;
25 (18) 18th district: Gallatin County;

1 (19) 19th district: Lincoln County."

2 Section 2. Section 3-5-102, MCA, is amended to read:

3 "3-5-102. Number of judges. In each judicial district

4 there must be the following number of judges of the district

5 court:

6 (1) in the ~~1st~~ 2nd, ~~6th~~ 7th, ~~10th~~ 11th, 16th, and

7 18th districts, two judges each;

8 (2) in the ~~1st~~ and 8th ~~district~~ districts, three

9 judges each;

10 (3) in the 4th and 13th districts, four judges each;

11 (4) in all other districts, one judge each."

12 Section 3. Section 3-5-102, MCA, is amended to read:

13 "3-5-102. Number of judges. In each judicial district

14 there must be the following number of judges of the district

15 court:

16 (1) in the ~~1st~~ 2nd, ~~6th~~ 7th, ~~10th~~ 11th, 16th, and

17 18th districts, two judges each;

18 (2) in the ~~1st~~ and 8th ~~district~~ districts, three

19 judges each;

20 (3) in the 4th and 13th districts, four judges each;

21 (4) in all other districts, one judge each."

22 NEW SECTION. Section 4. Selection of new judges. (1)

23 Except as provided in subsection (2), the judgeships created

24 by this act shall be initially filled at the 1984 general

25 election, and the individuals elected shall take office on

1 the first Monday of January, 1985.

2 (2) A judgeship created by this act may be initially

3 filled at the 1983 general election if a majority of the

4 county commissioners in each county within the judicial

5 district where the judge will be elected agree to conduct

6 the election. The individual elected shall take office on

7 the first Monday of January, 1984.

8 NEW SECTION. Section 5. Term of office for certain

9 judges. The term of office for any judge elected on or after

10 November 8, 1983, but before November 8, 1988, including

11 those judges elected under [section 4], shall expire January

12 2, 1989.

13 Section 6. Section 3-5-203, MCA, is amended to read:

14 "3-5-203. Term of office. The Except as provided in

15 [section 5], the term of office of judges of the district

16 court is 6 years and begins on the first Monday of January

17 next succeeding their election."

18 NEW SECTION. Section 7. Severability. If a part of

19 this act is invalid, all valid parts that are severable from

20 the invalid part remain in effect. If a part of this act is

21 invalid in one or more of its applications, the part remains

22 in effect in all valid applications that are severable from

23 the invalid applications.

24 NEW SECTION. Section 8. Effective dates. (1) Except

25 as provided in subsection (2):

- 1 (a) section 1 is effective January 7, 1985;
- 2 (b) section 2 is effective January 7, 1985, and
- 3 terminates January 2, 1989.
- 4 (2) Sections 1 and 2 or portions thereof are effective
- 5 January 2, 1984, as necessary to accommodate early elections
- 6 provided in section 4(2).
- 7 (3) Section 3 is effective January 2, 1989.
- 8 (4) Sections 4 through 7 are effective October 1,
- 9 1983.

-End-

STATE OF MONTANA

REQUEST NO. _____

FISCAL NOTE

Form BD-15

In compliance with a written request received _____, 19 _____, there is hereby submitted a Fiscal Note for LC 0135 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

LC 0135 is an act to alter certain judicial district boundaries and to change the number of judges in certain judicial districts; providing for the election of new judges; amending section 3-5-101 and 3-5-102, MCA; and providing a termination date and effective dates.

ASSUMPTIONS:

- 1) Each additional judge and staff will take office on January 1, 1985.
- 2) Each additional judge will have a staff consisting of one secretary and court reporter.
- 3) The estimates are based on FY 83 salaries and costs.

FISCAL IMPACT:

(State General Fund Expenditures)	<u>FY 84</u>	<u>FY 85</u>
Proposed Law		
Personal Services	-0-	104,500
Operating Expenses	-0-	6,000
Capital Outlay	-0-	-0-
Additional Expenditures for		
Proposed Law	-0-	\$110,500

LOCAL IMPACT:

(County Expenditures)		
Personal Services	-0-	72,000
Operating Expenses	-0-	6,000
Capital Outlay	-0-	22,800
Additional Expenditures for		
Proposed Law	-0-	\$101,600

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 11/10/82

FISCAL 1:A

1 the Supreme Court rule and recommends that the Court amend
2 its rule to allow one preemptory challenge to each party in
3 a civil case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Partial disapproval of supreme court rule on disqualification and substitution of judges. Under Article VII, section 2, of the Montana constitution, the legislature disapproves that provision within the supreme court order dated June 29, 1981, on the disqualification and substitution of judges that allows each adverse party in a civil case two substitutions of a judge.

-end-

1
2 INTRODUCED BY _____ BILL NO. _____

3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE CLERK OF
6 DISTRICT COURT IN CERTAIN COUNTIES TO PROVIDE FOR THE RANDOM
7 ASSIGNMENT OF JUDGES IN CIVIL AND CRIMINAL CASES."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Random assignment of judges in certain
11 counties. (1) Except as provided in subsection (3), in a
12 county with a population of 37,000 or more, located in a
13 multijudge district, the clerk of district court shall
14 institute a procedure for the random assignment of judges in
15 civil and criminal actions as follows:

16 (a) The clerk shall provide a minimum of 100 capsules
17 for each judge within the judicial district. An equal number
18 of capsules for each judge must be placed in a selection
19 box.

20 (b) At the time an action is initially entered in the
21 register, the clerk or his designated representative shall
22 blindly draw one capsule from the selection box to assign a
23 judge to the action.

24 (c) After selecting a capsule, the clerk or his
25 designated representative shall record the judge assignment

1 in the register and discard the capsule into a second box.
2 (d) The procedure described in subsections (b) and (c)
3 of subsection (1) must be repeated until all capsules have
4 been selected. Then the discarded capsules must be returned
5 to the selection box.

6 (2) The clerk may not at any time disclose to any
7 person the contents of the selection or discard boxes.

8 (3) The procedure described in subsection (1) is not
9 required for the assignment of judges in court proceedings
10 under Title 40, chapter 8; Title 41, chapter 5; Title 53,
11 chapter 20; or Title 53, chapter 21.

12 Section 2. Codification instruction. Section 1 is
13 intended to be codified as an integral part of Title 3,
14 chapter 5, part 5, and the provisions of Title 3, chapter 5,
15 part 5, apply to section 1.

-End-

INTRODUCED BILL

1 (f3) court reporters;
 2 (f4) defendants in criminal cases who are in custody;
 3 (f5) juveniles under the supervision of a district
 4 court; or
 5 (f6) law enforcement or probation officers acting in
 6 furtherance of a district court order; and
 7 (f7) other victim expenses created by and required
 8 for the conduct of and preparation for a trial in district
 9 court. In its request for a grant, a county must certify
 10 that:
 11 (f8) all expenditures from the district court
 12 fund have been lawfully made;
 13 (f9) that no transfers from the district court fund
 14 have been or will be made to any other fund; and
 15 (f10) that no expenditures have been made from the
 16 district court fund that are not specifically authorized by
 17 7-6-2511 and 7-6-23511; and
 18 (f11) any other information required by the department
 19 of administration.
 20 (f12) The department shall award a grant if the county's
 21 district court expenditures for the previous fiscal year
 22 exceeded the sum of:
 23 (f13) the product of the maximum mill levy authorized by
 24 law for district court purposes, whether or not assessed
 25 multiplied by the previous year's taxable valuation of the

1 county; and
 2 (f14) all revenues, except district court grants
 3 required by law to be deposited in the district court fund
 4 for the previous fiscal year.
 5 (f15) Eligible court expenditures for grant purposes
 6 include all costs of the county associated with the
 7 operation and maintenance of the district court, from
 8 whatever fund paid, except costs for building and capital
 9 items and library maintenance, replacement, and acquisition.
 10 (f16) The department of administration shall give
 11 notice to the district court and the notify each eligible
 12 county governing body as soon as possible of its intention
 13 to allow grants by August 31 for the previous fiscal year
 14 award a grant to that county and the amount of the award.
 15 (f17) Within 10 days of receiving notice from the
 16 department of administration that a grant will be made, the
 17 district court shall adopt a budget and transmit it to the
 18 county governing body.
 19 (f18) After receiving notice of the county governing
 20 body's approval of the budget, the department, at the
 21 administration shall cause a warrant to be issued to the
 22 treasurer of the county in which the district court is
 23 located for the total amount stated in the approved budget.
 24 (f19) The grant received by the county shall be placed
 25 in a fund account to be kept separate from the district

1 court fund.
 2 (7) After depleting the district court fund, the
 3 county treasurer may make disbursements from the fund
 4 accounts. At the close of its fiscal year, the county
 5 treasurer shall return to the department of administration
 6 any amounts remaining in the fund accounts. All grants are
 7 awarded; the department shall audit each approved grant
 8 request. The department shall charge each county receiving
 9 a grant an audit fee in the same amount as the costs
 10 incurred in conducting the audit.

11 (8) If the audit of a grant recipient discloses that
 12 the recipient received a grant in excess of the amount for
 13 which it was eligible, the recipient shall repay the excess
 14 to the department. The department shall redistribute any
 15 repaid excess amounts to the other counties that received
 16 grants from the appropriation from which the overpayment was
 17 made on the same basis as the original awards. No county is
 18 eligible for a district court grant if it owes the
 19 department a refund of a prior year's overpayment.

20 (9) The department shall prescribe rules and forms
 21 necessary to effectively administer this section. The
 22 department may require a county to provide any information
 23 considered necessary for the administration of the program.

24 NEW SECTION. Section 2. Repealer. Section 3, Chapter
 25 692, Laws of 1979, is repealed.

1 NEW SECTION. Section 3. Effective date. This act is
 2 effective on passage and approval.

-End-

Statement of Intent: LC 14

A statement of intent is required for this bill because it grants rulemaking authority to the Department of Administration for the purpose of administering the state grant to district courts programs.

Section 1 of this bill requires the Department of Administration to prescribe rules and forms necessary to effectively administer the program. It is contemplated that the rules will address the following:

- a. definition of terms;
- b. standard grant application format;
- c. circumstances for permitting time extension of grant application;
- d. form and timing of grant award notification; and
- e. procedures for adjusting grant awards following audit.

----- BILL NO. -----

INTRODUCED BY -----
BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE POSITION
OF PUBLIC DEFENSE COORDINATOR; TO PROVIDE FOR THE
COORDINATOR'S APPOINTMENT, QUALIFICATIONS, REMOVAL, SALARY,
STAFF, AND DUTIES; AND TO PROVIDE FOR A COUNTY CONTRIBUTION
TO THE COSTS OF THE COORDINATOR'S SERVICES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definition of coordinator. For the purposes
of [this act], "coordinator" means the public defense
coordinator provided for in [section 2].

Section 2. Position established. (1) There is a public
defense coordinator.

(2) The office of the coordinator is allocated to the
department of administration for administrative purposes
only, as provided in 2-15-121, except that the provisions of
subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e),
and (3)(a) of 2-15-121 do not apply.

Section 3. Appointment. The coordinator shall be
appointed by the governor from a list of three names
submitted by the chief justice of the supreme court.

Section 4. Qualifications. The coordinator shall be an

attorney in good standing, admitted to practice law in
Montana, who has engaged in the active practice of law for
at least 2 years before his appointment.

Section 5. Removal from office. The coordinator may be
removed from office by the governor only for cause.

Section 6. Salary. The salary of the coordinator shall
be fixed by the governor and shall be commensurate with that
of the training coordinator employed by the department of
justice.

Section 7. Additional attorneys and staff. The
coordinator may hire one or more attorneys and the office
staff that he considers necessary to assist him in
performing his duties.

Section 8. Duties of coordinator. The coordinator
shall:

(1) provide for and coordinate training of public
defenders and court-appointed counsel in current aspects of
criminal law;

(2) plan for the future provision of public defense
services in Montana;

(3) consolidate and provide such resources as official
opinions, legal briefs, and other relevant criminal law
information;

(4) collect data on indigent defense costs and
caseloads from each district court in the state;

STATE OF MONTANA

REQUEST NO. _____

FISCAL NOTE

Form BD-15

In compliance with a written request received _____, 19 _____, there is hereby submitted a Fiscal Note for LC 35 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

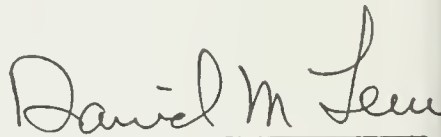
An act to create the position of public defense coordinator, to provide for the coordinator's appointment, qualifications, removal, salary, staff, and duties, and to provide for a county contribution to the costs of the coordinator's services.

ASSUMPTIONS:

1. Fiscal and accounting support assumed by staff of the coordinator.
2. Coordinator located in Helena.
3. Funding based on per hour cost, revenue could not be projected.
4. Salary increases in FY 85, 5%.
5. Operating expenses similar to County Prosecutor Services plus initial cost of setting up.
6. The Public Defense Coordinator is patterned after the County Prosecutor Services program of the Department of Justice.

FISCAL IMPACT

	FY 84	FY 85
Personal Services	101,370	108,837
Operating Expenses	18,700	17,000
Equipment	3,000	—
Total	123,070	125,837



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE TO
6 ASSIST COUNTIES IN THE PAYMENT OF SALARIES FOR DEPUTY COUNTY
7 ATTORNEYS; AND PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. State contribution for deputy county
11 attorney's salary. (1) On July 1 of each fiscal year, the
12 state auditor shall issue from the state general fund and
13 deliver to the treasurer of each county employing one or
14 more deputy county attorneys an amount equal to \$1 for each
15 person included in the county's population as determined in
16 subsection (2). The treasurer shall deposit this amount into
17 the county general fund to assist in payment of each deputy
18 county attorney's salary.

19 (2) For each 10th year after the fiscal year beginning
20 July 1, 1981, a county's population shall be based on the
21 latest federal decennial census statistics. During the
22 intervening fiscal years, a county's population shall be
23 based on the last calendar year's intercensal county
24 population estimates compiled by the federal-state
25 cooperative program from estimates of the university of

1 Montana bureau of business and economic research and the
2 U.S. bureau of the census or other estimates that the bureau
3 of business and economic research may certify.
4 Section 2. Effective date. This act is effective July
5 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. _____

FISCAL NOTE

Form BD-15

In compliance with a written request received _____, 19 _____, there is hereby submitted a Fiscal Note for LC 0067 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

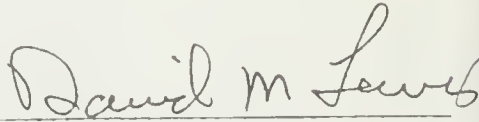
LC 0067 is an act to require the state to assist counties in the payment of salaries for deputy county attorneys.

ASSUMPTIONS:

- 1) Thirty-two counties with 1980 population totalling 701,813 have deputy county attorneys (Subcommittee on Judiciary Questionnaire, May 1982).
- 2) No additional counties hire deputy attorneys.
- 3) Population will grow 1% per year in these counties.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
General Fund Cost	<u>\$723,079</u>	<u>\$730,309</u>



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 11/10/82

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING LONGEVITY PAY
6 FOR COUNTY ATTORNEYS AND THEIR DEPUTIES; AMENDING SECTION
7 7-4-2505, MCA; AND PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Longevity increase for county
11 attorneys and deputies. (1) After completing 3 years of
12 service as county attorney or deputy county attorney, each
13 county attorney or deputy county attorney is entitled to an
14 increase in salary of \$1,000 on the anniversary date of his
15 employment as county attorney or deputy county attorney.
16 After completing 5 years of service as county attorney or
17 deputy county attorney, each county attorney or deputy
18 county attorney is entitled to an additional increase in
19 salary of \$1,500 on the anniversary date of his employment.
20 After completing 6 years of service as county attorney or
21 deputy county attorney and for each year of service
22 thereafter up to completion of the 11th year of service,
23 each county attorney or deputy county attorney is entitled
24 to an additional annual increase in salary of \$500.

25 (2) If a county attorney has formerly served as deputy

1 county attorney, his years of service as deputy must be
2 included in the calculation of the longevity increase
3 provided in subsection (1).

4 Section 2. Section 7-4-2505, MCA, is amended to read:
5 "7-4-2505. Amount of compensation for deputies and
6 assistants. (1) Subject to subsection (2), the boards of
7 county commissioners in the several counties in the state
8 shall have the power to fix the compensation allowed any
9 deputy or assistant of the following officers:

10 (a) clerk and recorder;

11 (b) clerk of the district court;

12 (c) treasurer;

13 (d) assessor;

14 (e) county attorney;

15 (f) auditor.

16 (2) (a) The salary of a deputy or an assistant listed
17 in subsection (1), excluding longevity payments provided in
18 [section 1], may not be more than 90% of the salary of the
19 officer under whom such deputy or assistant is serving.

20 (b) Where any deputy or assistant is employed for a
21 period of less than 1 year, the compensation of such deputy
22 or assistant shall be for the time so employed, provided the
23 rate of such compensation shall not be in excess of the
24 rates now provided by law for similar deputies and
25 assistants except as provided herein.

6

1 (c) Deputy assessors' salaries shall be the same as
2 paid the deputy clerk and recorder."
3 NEW SECTION, Section 3. Effective date. This act is
4 effective July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. _____

FISCAL NOTE

Form BD-15

In compliance with a written request received September 10, 19 82, there is hereby submitted a Fiscal Note for LC 068/01 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

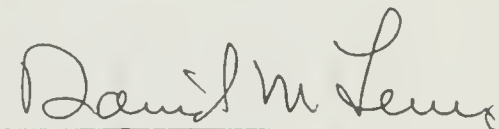
An act providing longevity pay for County Attorneys and their Deputies.

ASSUMPTIONS:

1. Longevity payment calculations for County Attorneys are based upon the data on years of service collected and compiled for the Subcommittee on Judiciary (May 1982).
2. Benefits of 13% are paid on the longevity increase.
3. The state is liable for one-half the cost of the longevity increase for County Attorneys and the benefits on its share.

FISCAL IMPACT:

State share (general fund)	Fiscal Year <u>1984</u>	Fiscal Year <u>1985</u>
	<u>\$ 84,185</u>	<u>\$ 98,028</u>



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 9/21/82

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING 7-4-2203, MCA,

6 TO PROVIDE FOR THE NONPARTISAN ELECTION OF COUNTY ATTORNEYS

7 AND SHERIFFS."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 7-4-2203, MCA, is amended to read:

11 "7-4-2203. County officers. (1) There may be elected

1 (k) one public administrator; and

2 (1) at least one justice of the peace.

3 (2) The commissioners may appoint at their discretion

4 constables. Not more than one constable may be appointed

5 for each justice's court.

6 (3) All elective township officers may be elected at

7 each general election as now provided by law.

8 (4) Each elective county attorney and sheriff shall be

9 nominated and elected on a nonpartisan ballot by the

10 qualified voters of the county according to the provisions

11 of Title 13, Chapter 14, part 1."

-pu3-

14 Montana constitution and such other qualifications as may be
15 prescribed by law:
16 (a) one county attorney;
17 (b) one clerk of the district court;
18 (c) one county clerk;
19 (d) one sheriff;
20 (e) one treasurer;
21 (f) one auditor if authorized by 7-6-2401;
22 (q) one county superintendent of schools;
23 (ii) one county surveyor;
24 (i) one assessor;
25 (j) one coroner;

----- BILL NO. -----

INTRODUCED BY -----
BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE TRAINING COORDINATOR FOR COUNTY ATTORNEYS MAY ACT AS SPECIAL COUNSEL TO A COUNTY; REQUIRING THE COUNTY TO PAY FOR THESE SPECIAL COUNSEL SERVICES; AMENDING SECTION 44-4-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-4-103, MCA, is amended to read:
"44-4-103. Functions. The training coordinator shall

perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function; and

(6) as provided in [section 2], acting as special counsel."

NEW SECTION. Section 2. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to him by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county.

NEW SECTION. Section 3. County payment for special counsel services. Whenever the training coordinator acts as special counsel as provided in [section 2], the department of justice shall charge the county a reasonable hourly fee for the training coordinator's services. Upon receipt of payment for these services, the department shall deposit

1 these funds into the state general fund.

2 ~~NEW_SECTION~~ Section 4. Codification instruction.

3 Sections 2 and 3 are intended to be codified as integral

4 parts of Title 44, chapter 4, part 1, and the provisions of

5 Title 44, chapter 4, part 1, apply to sections 2 and 3.

-End-

8111 NO. -----

2 INTRODUCED BY

BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY

5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING A DEFENDANT
6 SENTENCED TO DEATH TO BE CONFINED AT THE STATE PRISON AT
7 STATE EXPENSE PENDING EXECUTION; AMENDING SECTION 46-19-103,
8 MCA."

TO BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-19-103, MCA, is amended to read:
"46-19-103. Execution of death. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

121 Pending execution of a sentence of death, the
sheriff may deliver the defendant to the state prison for
confinement, and the state shall bear the costs of

imprisoning the defendant from the date of delivery

§ 271.31 The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

§ 37.441 A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place.

447151 The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same.

45761 After the execution, the sheriff must make a return upon the death warrant showing time, mode, and manner in which it was executed."

-end-



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